

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint of GameFly, Inc.

Docket No. C2009-1(R)

RESPONSE OF THE PUBLIC REPRESENTATIVE TO USPS MOTION FOR
RECONSIDERATION AND CLARIFICATION OF ORDER NO.1763

(August 9, 2013)

The Public Representative respectfully responds to the Postal Service's Motion for Reconsideration and Clarification of Order No. 1763, filed July 25, 2013.¹ The Postal Service requests clarification regarding two issues: the CPI-cap impact of Order No. 1763, and the universe of mailers eligible for classification established by Order No. 1763.

The RC Motion has several motions within it that must be separated out for procedural purposes. The Postal Service has requested the Commission approve the discrimination-free Round-Trip Mailer as a competitive product, while it simultaneously is appealing the remand decision to the District Court. This affords the Commission the opportunity to provide some clarity to the parties, going forward.

This docket would benefit from the Commission clarifying the following:

1. The implementation of Market-Dominate rates does not have price cap implications.
2. Market-Dominant rates should be implemented by September 30, 2013, pursuant to Order No. 1763.
3. Mail Classification Schedule (MCS) language for Letter and Flat Round-Trip Mailers applies to all mailers.

¹ United States Postal Service Motion for Reconsideration and Clarification of Order No. 1763, July 25, 2013,(RC Motion)

In the RC Motion, the Postal Service states, “the adoption of an equalized rate for all DVD mailers at the current First-Class Mail one ounce letter shape rate (46 cents) could result in a price decrease as small as, or smaller than, [0].004 percent.” RC Motion at 9. The negative bank resulting from the deflation of 2009, is the source of the Postal Service’s difficulty when it comes to implementing the price cap regulation of PAEA. Since the Postal Service has negative “banked authority” in four of the five market dominant classes, the Postal Service is functionally unable to bank authority in between market dominant price increases. This has lead to many complications, most recently the 2013 “Tech Credit” proposal.

Having a negative bank is not relevant to the current docket. When the Commission imposes a remedy to a complaint, pursuant to a Section 3662, the CPI-cap of section 3622 is not statutorily implicated. In this docket, by way of Order No. 718, the Commission has already established the precedent that complaint remedies do not implicate price cap calculations.²

Hidden within the Postal Service’s request for clarification of matters the Commission has already made clear, is an attempt to set the groundwork for accelerating the transfer of items to the competitive list. In its request to create a Round-Trip Mailer product, the Postal Service states it has “substantial questions concerning the price cap implications of complying with [Order No. 1763] by equalizing rates on the Market-Dominant product list.”³ The price cap implication, i.e., the negative bank, is the basis for the Postal Service filing for a competitive transfer. In its Request, the Postal Service summarizes the quintessential issue: “a clarification would allow the Postal Service to consider a sensible proposal for the equalization of rates on the Market-Dominant product list.”

It is clear that Market-Dominant MCS language applies to all mailers, even those not party to the complaint. The purpose of this docket was to end discrimination between mailers. It logically follows that the remedy would be non-discriminatory.

² Order No. 718 - Order on Complaint, April 20, 2011.

³ Request of the United States Postal Service Under Section 3642 to Create Round Trip Mailer Product, July 26, 2013 (Request) at 5-6.

The Public Representative believes this to be a highly significant case with far-reaching implications. The September 30, 2013, deadline for implementing a remedy pursuant to Order No. 1763 should not impose an unnecessarily accelerated deadline on the Commission for determining such an important issue. The Public Representative urges the Commission to clarify, for the Postal Service and GameFly, that if the competitive transfer issue is not decided by September 30, 2013, the Market-Dominant MCS language provided in Order No. 1763 will become active, providing GameFly with a full remedy 1,622 days after the initial complaint was filed.

Respectfully submitted,

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